



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of James Hartnett,
Pennsauken

CSC Docket No. 2021-1652

Request for Interim Relief

ISSUED: JULY 2, 2021 (SLK)

James Hartnett, a former Police Captain with Pennsauken¹, represented by Katherine D. Hartman, Esq., petitions the Civil Service Commission (Commission) for interim relief of his separation from employment, effective April 30, 2021.

In his request, Harnett presents that on April 14, 2021, he sent an email to the Police Chief advising that he intended to retire as of May 1, 2021 due to personal reasons. Additionally, he indicated that he intended to take a leave of absence from April 15, 2021 through April 30, 2021. On April 17, 2021, the Director of Public Safety sent a memo to the Chief regarding the “Plan of Action to the of the department after the retirement of Captain Hartnett.” Hartnett took off on April 15th and 16th and returned to work on Monday, April 19th. He explained to the Police Chief that he cancelled his retirement application as he believed that retiring would have a negative financial impact on his family and the department, and he worked from April 19th until April 30th. On April 19th, the Police Chief informed the Public Safety Director that Hartnett was cancelling his retirement application and recommended to the Public Safety Director that it was best for the organization to cancel Hartnett’s retirement application. Thereafter, between April 19th and 23rd, Hartnett contacted the Township Administrator to meet. However, on April 23rd, Harnett notified the Administrator that there was no reason to meet as he had been “contemplating a

¹ The County and Municipal Personnel Systems (CAMPS) indicates that Harnett is still an active employee.

decision to possibly retire” and he was now comfortable with his decision to cancel the application.

On April 26, 2021, the Public Safety Director sent a memo to Hartnett citing Civil Service regulations and indicating that Pennsauken “has decided to deny your request to rescind your resignation” and your resignation will be effective on April 30, 2021, as originally noticed.” Hartnett indicates that there was no explanation as to why the retirement was now being referenced as a resignation. He states that he never submitted his resignation and he retained counsel on April 27th who pointed out to the Public Safety Director that resignation is not the same as retirement and that her reliance on *N.J.A.C. 4A:2-6.1* relates to resignations in good stand and not retirements. Further, counsel highlighted that retirement is not defined in Civil Service regulations and he asserted that the Commission does not have jurisdiction over retirements. Additionally, Harnett’s counsel contacted Pennsauken’s Labor Counsel and shared her analysis of the law. In response to Labor Counsel’s question, Hartnett’s Counsel indicated that Harnett absolutely did not want to retire. On April 30th, the Public Safety Director instructed the Police Chief that Harnett’s last day of employment was April 30th and instructed him to collect Harnett’s public equipment and municipal property.

Hartnett argues that a review of the documents clearly showed he never resigned as he never used that word in any correspondence and it was only after Pennsauken invoked the word resignation that it terminated him. He asserts that Pennsauken understood that Harnett was not resigning as the April 17th memo referenced Hartnett’s retirement. Further, Hartnett and his counsel were clear that for a period of five days he contemplated retirement, changed his mind, and rescinded his retirement application. Therefore, he argues that Pennsauken’s reliance on *N.J.A.C. 4A:2-6.1* is misguided and unjustified and that the only acceptable remedy is his reinstatement. Hartnett highlights that he was not subject to discipline nor was he served a Final Notice of Disciplinary Action (FNDA). He states that he performed his duties in an exemplary manner and had the full support of the Police Chief as indicated in his letter where he described Hartnett as a valuable member of the organization who is not easily replaced. Additionally, the Police Chief opined that Hartnett’s retirement would create a huge void and the best scenario for the organization was to cancel his retirement application. He argued that there was no legal justification nor an appropriate procedural mechanism for Pennsauken to take its action. Harnett asserts that Pennsauken’s illegal termination is an attempt to put financial pressure upon him to force him to retire against his desires. Therefore, he requests to be returned to work as of April 29, 2021, with an award of back pay and full benefits. He also argues that his attorney’s fees should be reimbursed considering Pennsauken’s alleged bad faith.

In response, Pennsauken, represented by Michael J. DiPiero, Esq., presents that on April 14, 2021, Harnett sent an email to the Police Chief indicating that he

submitted his retirement paperwork to the Division of Pensions and Benefits and he stated that his last day working was April 14, 2021. Further, previously, Hartnett contacted Pennsauken's Chief Financial Officer (CFO) requesting approval of lifetime health benefits, and during his call, he requested that the CFO not inform the Township administration of his plans. On April 15, 2021, Hartnett reported to the Police Department to surrender his weapon and badge, clean out his office, and collect his personal belongings. He also emailed the Acting Municipal Administrator requesting a meeting to discuss his decision to retire. It asserts that it accepted his resignation and at no point was Hartnett facing disciplinary action.

Pennsauken argues that Hartnett lacks standing to appeal his resignation. It presents that resignations are governed by *N.J.A.C.* 4A:2-6.1. Pennsauken states that Harnett submitted his resignation by email on April 14, 2021 as his email indicated that his last working day would be the very same day. While Hartnett indicated that he applied for retirement, effective, May 1, 2021, he made it clear in his email that he was not coming back to work. Furthermore, the next day, he turned in his weapon and badge. Therefore, Pennsauken asserts that Harnett's actions on April 14th and 15th were clear indications that he resigned. It states that Harnett's actions, in light of *N.J.A.C.* 4A:2-6.1(a) and (b), indicated that he submitted his resignation which Pennsauken accepted on April 14th. Pennsauken notes that Hartnett apparently had a change of heart some time after April 15th and he stated in April 19th and 23rd emails that he wished to rescind his retirement application and return to employment. However, consistent with *N.J.A.C.* 4A:2-6.1(c), Pennsauken declined, which was within its discretion. Further, it presents that he has not made any allegation that his resignation was a result of duress or coercion under *N.J.A.C.* 4A:2-6.1(d). Therefore, because Hartnett resigned by his own volition, Pennsauken argues that he lacks the ability to appeal his resignation to the Commission.

Pennsauken states that retirement and resignation are separate and distinct decisions and it did not terminate Harnett's employment. It presents that police retirement is administered by the Division of Pensions and Benefits. Pennsauken asserts that retirements are separate and distinct from issues relating to the actual separation of employment which, in this case, is subject to the Commission's regulations. It indicates that *N.J.S.A.* 43:16A-1 defines retirement as "the termination of the member's active service with a retirement allowance granted and paid under the provision of this act" and resignations are governed by *N.J.A.C.* 4A:2-6.1.

Pennsauken does not dispute that Hartnett had the legal right to cancel his retirement application pursuant to *N.J.A.C.* 17:4-6.7. However, it asserts that withdrawing an application for retirement is not the same as rescinding one's application. In fact, Pennsauken presents that when an employee submits their retirement application to the Division of Pensions and Benefits, the employee must agree and accept the "Acknowledgment of Terms and Condition of Retirement" as

part of their application. One of the terms specifically states, “I understand that changing or canceling my retirement date *does not* guarantee continued employment with my employer.” Therefore, since Harnett filed his application for retirement, he accepted that cancelling his retirement did not guarantee continued employment with Pennsauken and to claim otherwise is inconsistent with the law and regulations. Accordingly, Pennsauken claims that Hartnett knew or should have known that when he submitted his application along with sending his email indicating that his last day working for it was April 14, 2021, that he was effectuating a resignation under the regulations.

Pennsauken submits *In the Matter of Roberto Lopez, Jr.*, Docket No. A-2061-16 (App. Div. November 27, 2018), where the employee was injured on the job and applied for accidental disability retirement on April 1, 2011, with a June 1, 2011 retirement date. He then resigned in good standing on June 30, 2011. The employee’s disability retirement was denied. On June 30, 2014, the employee requested to be reemployed and was denied. Both the Commission and the Appellate Division found that although the employee never submitted a formal resignation letter and the appointing authority never issued a formal confirmation of his resignation, that there was little question that he had resigned as he was neither paid nor worked for the appointing authority after his resignation. In this case, Pennsauken presents that Hartnett sent an email to the Police Chief indicating that his last day working was April 14, 2021. Further, it notes that Hartnett’s email did not state that his no longer coming to work was contingent upon his retirement application being approved or that he would continue to work while his application was pending. Instead, Pennsauken highlights that Hartnett cleaned out his office, took home his personal belongings, and turned in his badge and service weapon and asserts that these actions and notification clearly indicated to Pennsauken that he resigned, and it was within its discretion to decline to accept his request to rescind his application.

Additionally, Pennsauken states that Hartnett fails to set forth allegations that meet the standard for interim relief. It argues that Hartnett cannot show a clear likelihood of success as it had the right to deny his request to rescind his resignation. Pennsauken reiterates its position that Hartnett’s email and subsequent actions made it clear he was resigning. Further, Pennsauken accepted his resignation as Hartnett was not required to return to work after his April 14, 2021 email. Also, it presents that Hartnett was not facing discipline nor termination as his actions were voluntary. Further, it claims that Hartnett cannot demonstrate immediate or irreparable harm because if he was reinstated, the Commission could reinstate him with back pay and without the loss of any seniority. Additionally, Harnett can always resubmit his retirement application and retire. Lastly, it indicates that if Hartnett does not want to retire, he can seek other employment and defer retirement to a later date.

Finally, Pennsauken argues that the public interest would not be served if Harnett’s request is granted. It presents that at the time of his resignation, Harnett

was the department's second highest ranking Police Officer. Upon learning of Hartnett's resignation, Pennsauken needed to assess its operations to maintain continuity of the police department. It asserts that if employees who resign are automatically able to rescind their resignation, this would create uncertainty for municipalities in terms of succession planning, operations, and day-to-day functioning providing services to residents. It highlights that Civil Service regulations indicate that appointing authorities **may, not shall**, consent to the employee request to rescind their resignation. Pennsauken contends that this discretion is paramount in providing appointing authorities flexibility to decide what best fits its needs when an employee who resigns has a change of heart. It further notes that the regulations do not provide the employee with the authority to impose upon the appointing authority a duty to accept their rescission of a resignation as such a rule would create uncertainty and not be in the public interests. It emphasizes that Hartnett's decision to resign without notice to leave the police department without the opportunity to transition to a potential replacement on April 14, 2021, turn in his badge and service weapon, and clear out his personal items were all voluntary as Pennsauken did nothing to push Hartnett into retirement or resign and he was not facing disciplinary action. Simply, Pennsauken argues that its acceptance of Hartnett's resignation did not violate any law or regulation and it did not otherwise act improperly towards Hartnett.

CONCLUSION

N.J.A.C. 4A:2-1.2(a) provides that upon the filing of an appeal, a party to the appeal may petition the Commission for a stay or other relief pending final decision of the matter.

Pursuant to *N.J.A.C.* 4A:2-1.2(c), the standards to be considered regarding a petition for interim relief are:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm if the request is not granted;
3. Absence of substantial injury to other parties if the request is granted;
- and
4. The public interest.

N.J.A.C. 4A:2-6.1(a) provides that any permanent employee in the career service may resign in good standing by giving the appointing authority at least 14 days written or verbal notice, unless the appointing authority consents to a shorter notice.

N.J.A.C. 4A:2-6.1(b) provides that that resignation shall be considered accepted by the appointing authority upon receipt of the notice of resignation.

N.J.A.C. 4A:2-6.1(c) provides that a request to rescind the resignation prior to its effective date may be consented by the appointing authority.

N.J.A.C. 4A:2-6.1(d) provides that where it is alleged that a resignation was the result of duress or coercion, an appeal may be made to the Commission under *N.J.A.C.* 4A:2-1.1.

Although *N.J.A.C.* 4A:2-6.1. does not expressly address “retirement,” this rule provides the appropriate framework for voluntary separation from employment. *See In the Matter of Geraldine Bryant* (MSB, decided January 30, 2008)

In this matter, the record indicates that on April 14, 2021, Harnett sent an email to the Police Chief indicating that he submitted his retirement paperwork to the Division of Pensions and Benefits advising that he intended to retire as of May 1, 2021 due to personal reasons. He also stated that his last day working was April 14, 2021, and he intended to take a leave of absence from April 15, 2021 through April 30, 2021. Therefore, although Hartnett did not specifically use the word “resignation” in his email, under *N.J.A.C.* 4A:2-6.1(a), this was notice of a request to resign in good standing, effective April 30, 2021. Further, under *N.J.A.C.* 4A:2-6.1(b), upon receipt of his April 14, 2021 email, his resignation in good standing was accepted by Pennsauken on the same date. On April 19, 2021, by informing the Police Chief that he cancelled his retirement application and he wanted to continue in his employment, Hartnett was basically asking for Pennsauken to rescind his resignation in good standing. However, on April 26, 2021, the Public Safety Director sent a memo to Hartnett indicating that Pennsauken “has decided to deny your request to rescind your resignation” and your resignation will be effective on April 30, 2021, as originally noticed,” which was within its discretion as *N.J.A.C.* 4A:2-6.1(c) indicates that an appointing authority **may** rescind the resignation to the effective date, but there is no requirement that it must. Finally, as Hartnett has not alleged or presented any facts that Pennsauken coerced or subjected him to duress which forced him to submit his “retirement/resignation,” the ability to appeal his resignation in good standing under *N.J.A.C.* 4A:2-6.1(d) and *N.J.A.C.* 4A:2-1.1 is not applicable.

Concerning Hartnett’s statement that retirement is not defined in Civil Service regulations and the Commission does not have jurisdiction over retirements, his April 14, 2021 email was clearly a request to resign, a request upon which the Commission does have jurisdiction.² Regarding his assertion that he did not resign because he never used the word “resign,” there is no requirement under Civil Service law or rules

² Harnett’s actions of previously contacting Pennsauken’s CFO requesting approval of lifetime health benefits, not working on April 15th and reporting to the Police Department on that same date to surrender his weapon and badge, clean out his office, and collect his personal belongings, and his not working on April 16th support that he was resigning. However, his April 14th email alone, even without such actions, are sufficient to indicate that he was resigning.

that requires an employee to specifically use the word “resign” to request to resign. Clearly, Harnett’s actions indicated that he was no longer going to work for Pennsauken, which is a resignation. Further, the fact that Pennsauken referred to Hartnett’s request as a retirement and not a resignation in an internal document, does not indicate that Hartnett did not request to resign from his employment from Pennsauken. In essence, Hartnett indicated that he was “retiring” for the purposes of his pension and he was “resigning” from his Civil Service position with Pennsauken as he indicated that his last day of employment with Pennsauken was April 30, 2021. Moreover, the fact that the Chief of Police indicated that Hartnett was a valuable member of the organization and supported the rescinding of his resignation, does not mandate that Pennsauken follow the Police Chief’s recommendation. Additionally, there is no requirement under *N.J.A.C. 4A:2-6.1(c)* that an appointing authority justify its reasons for its refusal to accept a request to rescind a resignation in good standing. Furthermore, as Harnett was not disciplined, there was no need for disciplinary proceedings.

ORDER

Therefore, it is ordered that this petition be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 30TH DAY OF JUNE, 2021

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